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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,260	08/15/2001	Benjamin Mandler	MANDLER=1	9743

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EXAMINER

RIMELL, SAMUEL G

ART UNIT PAPER NUMBER

2165

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/929,260

Applicant(s)

MANDLER ET AL.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 67-69, 76-81 and 88-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 67, 68, 76-80 and 88-90 is/are rejected.
- 7) ☒ Claim(s) 69, 81 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 67-68, 76-80 and 88-90 are rejected under 35 U.S.C. 102(e) as being anticipated by Mandler et al. (US Pre-Grant Publication US 2001/0049675).

Claim 67: In Mandler et al., page 8, claim 19, lines 4-7 there is disclosed a file system engine that receives a file request via a file system application programming interface wherein the request specifies file content of memorized files.

Page 8, claim 19, lines 8-12 disclose a parser linked to the linked to the file system engine that retrieves structural information of documents and further retrieves at least one of elements, attributes and values from documents.

Page 8, claim 19, lines 13-15 disclose an indexer linked to the parser for constructing an inverted index of the elements, attributes and values.

Page 8, claim 19, lines 16-21 states that responsive to a file request, the file system engine retrieves postings of the inverted index that satisfy requirements of the file request and returns a hierarchical tree of directories to the user.

FIG. 8 gives an example of the file system returning to the user a special virtual directory (the directory "Profile"). The content of this special virtual directory comprises at least one level within the hierarchy ("Ticker") that is more deeply nested than the parent node ("Profile") of the special virtual directory.

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Claim 68: FIG. 8 illustrates the invocation of an operator (the directory path “F:/Profile/Ticker”) and indicates a context node (the node “Ticker”) and a parent node (the node “Profile”).

Claim 76: Claim 20 of Mandler et al. states that the inverted index comprises a structural section having postings of said structural information and a words section having postings of words of the documents.

Claim 77: Claim 22 of Mandler et al. calls for an analyzer for updating the inverted index and analyzing additions to the memorized files.

Claim 78: Claim 23 of Mandler et al. calls for the parser to retrieve structural information from the documents.

Claim 79: See remarks for claim 67. Note that the Mandler et al. reference and claim 19 refer specifically to the analysis of XML documents.

Claim 80: See remarks for claim 68.

Claim 88: See remarks for claim 76.

Claim 89: See remarks for claim 77.

Claim 90: See remarks for claim 78.

Claims 69 and 81 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### Remarks

Applicant's response and arguments have been considered.

Applicant's response takes the form of a Declaration under 37 CFR 1.132, attempting to demonstrate that Benjamin Mandler is the inventor of the subject matter relied upon by the examiner in the prior art reference to Mandler et al. (US2001/0049675). The purpose of this Declaration is to eliminate the rejection under 35 USC 102(e), by establishing that the subject matter in the prior art is not to "another" (required by 35 USC 102(e)), but is instead invented by the very same person, Benjamin Mandler.

Both the Declaration and the arguments included therewith have been fully considered, but are not considered sufficient to overcome the rejection for the following reasons:

(1) Examiner cannot establish that the claims of the present invention were invented by Benjamin Mandler alone, since there is a listed co-inventor (Roman Talyansky) in the present application. The Declaration would only be effective if it can be proven that Benjamin Mandler were the inventor of the claimed subject matter in the present invention as well as the inventor of the prior art subject matter relied upon by the examiner.

(2) MPEP 716.10 states that an unequivocal statement from the applicant regarding the inventorship of subject matter in a patent or published application can only be accepted if there is no evidence to the contrary. MPEP 716.10 states:

An uncontradicted unequivocal statement from the applicant regarding the subject matter disclosed in an article, patent or published application will be accepted as establishing inventorship. *In re DeBaun* 687 F.2d 459, 463, 214 USPQ 933, 936 (CCPA 1982). However, a statement by the applicants regarding their inventorship in view of an article, patent or published application may not be sufficient where there is evidence to the contrary. *Ex Parte Kroger* 218 USPQ 370 (Bd. App. 1982).

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In this instance, the co-inventors listed on the Mandler et al. prior art are evidence that the subject matter in the prior art may have been invented by others. As a result, the unequivocal statement of applicant Benjamin Mandler cannot be accepted by itself. Additional evidence is required.

(3) There is no objective evidence in support of the statements of Benjamin Mandler. For example, there are no logbooks or correspondence supporting the assertion that the subject matter relied upon by the examiner was in fact invented by Benjamin Mandler. While it is most certainly possible that the subject matter was in fact invented by Benjamin Mandler, at the present time, there is insufficient evidence supporting this assertion.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.

A handwritten signature in black ink, appearing to read 'S. Rimell', written in a cursive style.

Sam Rimell  
Primary Examiner  
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